

## Message Text

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ORIGIN EB-07

INFO OCT-01 LOC-01 L-03 COME-00 AF-08 ARA-10 EA-09 EUR-12

NEA-10 SIG-02 ISO-00 SS-15 NSC-05 OTPE-00 FCC-02 PA-02

PRS-01 USIA-15 H-02 IO-13 TRSE-00 /118 R

DRAFTED BY EB/IFD/BP:SRPRUETT:BT

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EUR:RPE:REBRESLER

EB:ITP:OT:GCP:SEAHMAD

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R 130305Z NOV 76

FM SECSTATE WASHDC

TO ALL DIPLOMATIC POSTS

UNCLAS STATE 279836

E.O. 11652: N/A

TAGS: EIND

SUBJECT: NEW U.S. COPYRIGHT LAW

SUMMARY: THE PRESIDENT SIGNED ON OCTOBER 19, 1976, THE BILL FOR THE GENERAL REVISION OF THE COPYRIGHT LAW, PUB.L.94-553, WHICH WILL TAKE EFFECT JANUARY 1, 1978. THIS IS THE FIRST OVERALL REVISION OF U.S. COPYRIGHT LAW SINCE 1909. THERE ARE A NUMBER OF PROVISIONS WHICH ARE VERY SIGNIFICANT IN TERMS OF OUR INTERNATIONAL COPYRIGHT RELATIONS. THIS CABLE FOCUSES ON THOSE PROVISIONS.

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1. THE EXISTING COPYRIGHT LAW IS BASICALLY THE SAME AS THE ACT OF 1909. SINCE THAT TIME, SIGNIFICANT CHANGES IN TECHNOLOGY HAVE AFFECTED OPERATION OF THE COPYRIGHT LAW. MOTION PICTURES, SOUND RECORDINGS, RADIO, AND TELEVISION

PRESENTED NEW PROBLEMS NOT DEALT WITH BY THE 1909 ACT. NEW TECHNIQUES FOR CAPTURING AND COMMUNICATING PRINTED MATTER AND INCREASING USE OF INFORMATION STORAGE AND RETRIEVAL DEVICES, COMMUNICATION SATELLITES, AND LASER TECHNOLOGY PROMISE GREATER CHANGE FOR THE FUTURE. THESE TECHNICAL ADVANCES HAVE CREATED NEW INDUSTRIES AND METHODS FOR REPRODUCTION AND DISSEMINATION OF COPYRIGHTED WORKS CAUSING THE EVOLUTION OF NEW PATTERNS OF BUSINESS RELATIONS BETWEEN AUTHORS AND USERS.

2. BETWEEN 1924 AND 1940, NUMEROUS ATTEMPTS AT REVISION FAILED, PARTLY BECAUSE OF DISAGREEMENT AMONG PRIVATE INTERESTS OVER THE NUMBER OF YEARS TO BE FIXED AS THE TERM OF COPYRIGHT PROTECTION. BECAUSE OF THIS DISPUTE, THE U.S. WAS UNABLE TO ADHERE TO THE BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS, WHICH REQUIRES, AMONG OTHER THINGS, PROTECTION FOR THE AUTHOR'S LIFETIME PLUS 50 YEARS. U.S. PROTECTION WAS LIMITED TO A MAXIMUM PERIOD OF 56 YEARS. FOR THIS REASON, THE U.S. PARTICIPATED IN THE DEVELOPMENT OF THE UNIVERSAL COPY-RIGHT CONVENTION (UCC) AFTER WORLD WAR II. THE UCC WAS NEGOTIATED IN 1952 AND THE U.S. ADHERED TO IT IN 1955. THE UCC 1952 TEXT BASICALLY REQUIRES THAT EACH CONTRACT-ING STATE ACCORD THE SAME PROTECTION TO AUTHORS OF THE OTHER CONTRACTING STATES THAT IT PROVIDES FOR ITS OWN NATIONALS (I.E. NATIONAL TREATMENT). ADHERENCE TO THE UCC ESTABLISHED COPYRIGHT RELATIONS BETWEEN THE U.S. AND SOME COUNTRIES FOR THE FIRST TIME AND SUPPLEMENTED CER-TAIN EXISTING BILATERAL AGREEMENTS AS WELL AS THE REGION-AL BUENOS AIRES CONVENTION OF 1911. SINCE 1955 THE BASIC U.S. POLICY HAS BEEN TO CONDUCT COPYRIGHT RELATIONS IN THE MULTILATERAL CONTEXT.

3. INTEREST IN A REVISION IN U.S. COPYRIGHT LAW WAS REVIVED IN 1955 AND AFTER EXTENSIVE STUDY, A DRAFT BILL WAS INTRODUCED IN CONGRESS ON JULY 20, 1964. A REVISED UNCLASSIFIED

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VERSION WAS INTRODUCED THE FOLLOWING YEAR IN THE 89TH CONGRESS. IN THE FOLLOWING YEARS, CONGRESS TOOK NO ACTION BECAUSE OF THE EMERGENCE OF MAJOR PROBLEMS, NOTABLY CABLE TELEVISION. THE 94TH CONGRESS COMPLETED ACTION ON THE BILL ON SEPTEMBER 29, 1976, JUST PRIOR TO ADJOURNMENT AND IT WAS SIGNED INTO LAW BY THE PRESIDENT ON OCTOBER 19. BELOW ARE DISCUSSED THE KEY PROVISIONS AFFECTING OUR INTERNATIONAL COPYRIGHT RELATIONS.

4. SECTION 104, "SUBJECT MATTER AND SCOPE OF COPYRIGHT: NATIONAL ORIGIN", SETS FORTH THE BASIC CRITERIA UNDER WHICH WORKS OF FOREIGN ORIGIN CAN BE PROTECTED UNDER U.S. COPYRIGHT LAW. PUBLISHED WORKS ARE SUBJECT TO PROTECTION UNDER ANY ONE OF THE FOLLOWING CONDITIONS:

-- (A) ON THE DATE OF FIRST PUBLICATION, ONE OR MORE OF THE AUTHORS IS A NATIONAL, DOMICILIARY, OR SOVEREIGN AUTHORITY OF A COUNTRY WITH WHICH THE U.S. HAS COPYRIGHT RELATIONS PURSUANT TO TREATY OR IS STATELESS;

-- (B) THE WORK WAS FIRST PUBLISHED IN THE UNITED STATES OR IN A UCC COUNTRY;

-- (C) THE WORK IS PUBLISHED BY THE UNITED NATIONS OR THE ORGANIZATION OF AMERICAN STATES;

-- (D) THE WORK IS COVERED BY A PRESIDENTIAL PROCLAMATION EXTENDING PROTECTION TO WORKS ORIGINATING IN A SPECIFIED COUNTRY WHICH EXTENDS PROTECTION TO U.S. WORKS ON "SUBSTANTIALLY THE SAME BASIS" AS TO ITS OWN WORKS.

5. SECTION 302, "DURATION OF COPYRIGHT: WORKS CREATED ON OR AFTER JANUARY 1, 1978", DEALS WITH THE DURATION OF COPYRIGHT PROTECTION. (THIS IS PROBABLY THE SINGLE MOST IMPORTANT SECTION IN TERMS OF OUR INTERNATIONAL COPYRIGHT RELATIONS.) ESSENTIALLY, SECTION 302(A) PROVIDES FOR A COPYRIGHT TERM OF THE LIFE OF THE AUTHOR PLUS 50 YEARS AFTER HIS DEATH, WITH SPECIAL PROVISIONS COVERING THE TERMS OF COPYRIGHT IN ANONYMOUS AND PSEUDONYMOUS WORKS AND WORKS MADE FOR HIRE. (PROTECTION FOR WORKS CREATED BEFORE THAT DATE IS DEALT WITH IN VARYING MANNERS, UNCLASSIFIED

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DEPENDING UPON WHETHER THEY WERE PREVIOUSLY SUBJECT TO STATUTORY COPYRIGHT AND, IF SO, WHETHER THEY ARE IN THEIR FIRST OR SECOND TERM OF COPYRIGHT ON JANUARY 1, 1978. THE NEW LAW DOES NOT ACCORD COPYRIGHT TO WORKS "ENTERING" THE PUBLIC DOMAIN BEFORE JANUARY 1, 1978.) SUCH A TERM OF PROTECTION IS IN LINE WITH THE PRACTICE OF MOST COUNTRIES OF THE INTERNATIONAL COPYRIGHT COMMUNITY AND WILL ALSO REMOVE A MAJOR OBSTACLE TO THE POSSIBLE ADHERENCE OF THE U.S. TO THE BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS. (THE U.S. IS A PARTY TO THE OTHER WORLDWIDE COPYRIGHT AGREEMENT, THE UNIVERSAL COPYRIGHT CONVENTION.) OUR MEMBERSHIP IN THE BERNE CONVENTION WOULD FACILITATE AND SIMPLIFY INTERNATIONAL COPYRIGHT PROTECTION FOR U.S. NATIONALS.

6. SECTION 601, "MANUFACTURE, IMPORTATION, AND PUBLIC DISTRIBUTION OF CERTAIN COPIES", CONCERNS THE SO-CALLED "MANUFACTURING CLAUSE" WHICH IS DESIGNED BASICALLY TO PROTECT THE U.S. PRINTING INDUSTRY. THE MANUFACTURING --- CLAUSE OF THE CURRENT LAW SEVERELY LIMITS THE IMPORTATION INTO OR THE DISTRIBUTION WITHIN THE U.S. OF ENGLISH LANGUAGE BOOKS AUTHORED BY U.S. NATIONALS OR DOMICILIARIES, UNLESS THE COPIES ARE PRODUCED IN, OR MADE FROM TYPE

SET IN, OR PLATES MADE IN, THE UNITED STATES.

7. SECTION 601 LIBERALIZES THE PRESENT MANUFACTURING CLAUSE. FIRST, A VIOLATION OF THE MANUFACTURING CLAUSE WOULD NOT AFFECT THE RIGHT OF THE COPYRIGHT PROPRIETOR IN A BOOK TO AUTHORIZE A MOTION PICTURE VERSION OR OTHER DERIVATIVE USE OF THE WORK. IT ONLY AFFECTS ENFORCEMENT OF THE COPYRIGHT AS AGAINST UNAUTHORIZED REPRODUCTION AND

DISTRIBUTION OF THE WORK. SECOND, THE NUMBER OF COPIES OF ANY WORK AUTHORIZED BY A U.S. NATIONAL, OR DOMICILIARY, AND MANUFACTURED ABROAD THAT MAY BE IMPORTED HAS BEEN INCREASED FROM 1,500 TO 2,000, PROVIDED THAT THE UNITED STATES CUSTOMS SERVICE IS PRESENTED WITH AN IMPORT STATEMENT ISSUED UNDER THE SEAL OF THE COPYRIGHT OFFICE. THIRD, MANUFACTURE IN CANADA IS EQUATED WITH U.S. MANUFACTURE UNDER THE NEW LAW. FOURTH, AND MOST IMPORTANT, THE MANUFACTURING CLAUSE WILL EXPIRE ON JULY 1, 1982.  
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FIFTH, EVEN BEFORE JULY 1, 1982, A NEW EXCEPTION TO THE MANUFACTURING CLAUSE (SECTION 601(B)(7)) HAS BEEN ADDED WHICH ALLOWS AN INDIVIDUAL AMERICAN AUTHOR, THROUGH CHOICE OR NECESSITY, TO ARRANGE FOR PRINTING AND DISTRIBUTION OF HIS WORK BY A FOREIGN RATHER THAN A DOMESTIC U.S. PUBLISHER, AND PERMITS IMPORTATION INTO AND DISTRIBUTION IN THE U.S. OF UNLIMITED COPIES OF THE FOREIGN EDITION. THIS ADDITION WAS PROPOSED BY THE AUTHORS LEAGUE OF AMERICA TO ENABLE A U.S. AUTHOR TO GO ABROAD IN SEEKING A PUBLISHER IF HE SO DESIRES; THIS EXCEPTION IS GENERALLY NOT AVAILABLE WHERE U.S. PUBLISHING COMPANIES ARE INVOLVED IN PUBLICATION OF THE WORK.

8. THE EXACT IMPLICATIONS OF THIS NEW EXCEPTION TO THE MANUFACTURING CLAUSE WILL NOT BE KNOWN UNTIL A BODY OF EXPERIENCE IS BUILT UNDER IT. U.S. PUBLISHERS ARE STILL REQUIRED TO MANUFACTURE COPIES OF AMERICAN-AUTHORED BOOKS IN THE U.S. OR CANADA. PRESUMABLY MOST TRADE BOOKS (I.E., BEST SELLERS) WILL STILL BE MANUFACTURED IN THE U.S. BECAUSE OF CERTAIN INHERENT ADVANTAGES OF HAVING A U.S. PUBLISHER AND BECAUSE OF CERTAIN COST FACTORS (E.G., TRANSPORTATION). HOWEVER, SOME U.S. AUTHORS MAY FIND IT ADVANTAGEOUS OR NECESSARY TO SEEK A FOREIGN PUBLISHER FOR CERTAIN WORKS (E.G., SPECIALIZED WORKS WITH A LIMITED MARKET).

9. THE DEPARTMENT OPPOSED THE CONTINUATION OF THE MANUFACTURING CLAUSE IN ANY FORM BECAUSE IT IS A PROTECTIONIST MEASURE INCONSISTENT WITH BASIC U.S. POLICY IN INTERNATIONAL TRADE OF REDUCING TRADE BARRIERS, INCLUDING NON-TARIFF BARRIERS. WE ALSO OPPOSED THE EXCEPTION TO THE MANUFACTURING CLAUSE FOR CANADA INTRODUCED BY THE NEW LAW

AS A VIOLATION OF OUR OBLIGATIONS UNDER THE GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT) AND VARIOUS BILATERAL TREATIES. SPECIFICALLY, THE DEPARTMENT BELIEVES THAT THE EXCEPTION MAY VIOLATE OUR OBLIGATIONS UNDER ARTICLE XIII OF THE GATT WHICH REQUIRES NON-DISCRIMINATORY APPLICATION OF THE QUANTITATIVE RESTRICTIONS. MOST OF OUR BILATERAL FRIENDSHIP, COMMERCE AND NAVIGATION TREATIES ALSO REQUIRE NON-DISCRIMINATION. HOWEVER, BECAUSE AN EXPIRATION DATE

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ON THE MANUFACTURING CLAUSE HAS BEEN WRITTEN INTO THE BILL AND THE EXCEPTION FOR AUTHORS, THE DEPARTMENT BELIEVES THAT THERE SHOULD BE NO SIGNIFICANT DIFFICULTIES ENCOUNTERED IN THE GATT OR WITH COUNTRIES WITH WHICH WE HAVE BILATERAL TRADE AGREEMENTS.

10. A NUMBER OF OTHER PROVISIONS THAT HAVE INTERNATIONAL COPYRIGHT IMPLICATIONS SHOULD BE MENTIONED. UNAUTHORIZED DUPLICATION (PIRACY) OF SOUND RECORDINGS HAS BEEN A PROBLEM BOTH DOMESTICALLY AND INTERNATIONALLY. SOUND RECORDINGS WILL CONTINUE TO BE FULLY PROTECTED UNDER U.S. COPYRIGHT LAW. PREVIOUSLY, SOUND RECORDINGS HAVE BEEN PROTECTED BY AN AMENDMENT TO THE 1909 COPYRIGHT ACT, ENACTED IN OCTOBER 1971. IN ADDITION, SECONDARY TRANSMISSIONS BY CABLE OF TELEVISION SIGNALS RECEIVED FROM MEXICO AND CANADA WILL BE SUBJECT TO COMPULSORY LICENSING PROCEDURES WHICH WILL REQUIRE COMPENSATION. FINALLY, SECTION 201(E) PROHIBITS GIVING EFFECT IN THE U.S. TO INVOLUNTARY TRANSFERS OF AUTHORS' RIGHTS BY GOVERNMENT BODIES UNLESS A PREVIOUS VOLUNTARY TRANSFER HAD OCCURRED, SUCH AS A SALES AGREEMENT WITH A PUBLISHER. THIS WOULD HAVE THE EFFECT OF PREVENTING GOVERNMENTS FROM SEIZING THE COPYRIGHT OF A DISSIDENT AUTHOR IN ORDER TO SUPPRESS PUBLICATION OF HIS WORKS IN THE U.S.

ACTION:

11. (A) POSTS IN COUNTRIES WHICH HAVE COPYRIGHT RELATIONS WITH THE UNITED STATES (SEE APPENDIX, "TREATIES IN FORCE", JANUARY 1, 1975, PP. 438-446.) ARE REQUESTED TO CONTACT THE APPROPRIATE FOREIGN OFFICIALS AND INFORM THEM ABOUT PASSAGE OF THE COPYRIGHT REVISION LEGISLATION USING MATERIAL FROM PARA 1-7 AND 10 AS DESIRABLE.

-- (B) IT SHOULD ALSO BE POINTED OUT THAT THE EXTENSION OF THE TERM OF PROTECTION HAS IMPORTANT IMPLICATIONS FOR EXISTING COPYRIGHTED FOREIGN AS WELL AS DOMESTIC WORKS. MOST IMPORTANTLY, FOREIGN WORKS IN THEIR FIRST TERM OF U.S. COPYRIGHT ON JANUARY 1, 1978 WILL STILL HAVE TO BE RENEWED UNDER THE NEW LAW. THE COPYRIGHT OFFICE IS PRESENTLY PREPARING CIRCULAR INSTRUCTIONS ON THIS AND OTHER MATTERS RELATING TO THE NEW LAW, WHICH WE PLAN TO SEND TO VARIOUS U.S. POSTS. POSTS ARE INVITED TO INDI-

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CATE AN INTEREST IN RECEIVING THESE INSTRUCTIONS.

-- (C) AS MANY POSTS ARE AWARE PIRACY OF BOOKS AND  
SOUND RECORDINGS (I.E. REPRODUCTION OR REPRINTING WITHOUT  
PERMISSION OF THE COPYRIGHT PROPRIETOR) CONTINUES TO BE A  
MAJOR PROBLEM ESPECIALLY IN THE LESS DEVELOPED COUNTRIES.  
IN RECENT YEARS THE PIRACY OF SOUND RECORDINGS, BOTH  
DISCS AND TAPES, HAS BECOME INCREASINGLY HARD TO CONTROL

BECAUSE OF IMPROVED TECHNOLOGY FOR REPRODUCTION. PIRACY  
OF RECORDED TAPES HAS BECOME ESPECIALLY WIDESPREAD. THE  
DEPARTMENT WOULD APPRECIATE REPORTING ON INSTANCES OF  
PIRACY AND ON ANY NEW LEGISLATION AFFECTING COPYRIGHT.  
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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 15 SEP 1999  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** COPYRIGHT LAW  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 13 NOV 1976  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** n/a  
**Disposition Approved on Date:**  
**Disposition Authority:** n/a  
**Disposition Case Number:** n/a  
**Disposition Comment:**  
**Disposition Date:** 01 JAN 1960  
**Disposition Event:**  
**Disposition History:** n/a  
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**Disposition Remarks:**  
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**Locator:** TEXT ON-LINE, TEXT ON MICROFILM  
**Office:** ORIGIN EB  
**Original Classification:** UNCLASSIFIED  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 6  
**Previous Channel Indicators:**  
**Previous Classification:** n/a  
**Previous Handling Restrictions:** n/a  
**Reference:** n/a  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** powellba  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 11 AUG 2004  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <11 AUG 2004 by vandyklc>; APPROVED <09 NOV 2004 by powellba>  
**Review Markings:**

Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
04 MAY 2006

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** NEW U.S. COPYRIGHT LAW  
**TAGS:** EIND, US, XX  
**To:** ALL DIPLOMATIC POSTS  
**Type:** TE  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006